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Mr St-JOHN'S

# SPEECH

## TO THE LORDS IN THE Vpperhouse of PARLIAMENT:

*January* 7, 1640.

## CONCERNING

# Ship-Money.

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Mr. St-IOHN'S

# SPEECH
## CONCERNING
# Ship-money.

MY LORDS,

THE KNIGHTS, Citizens, and Burgeſſes, of the Commons Houſe, have intruſted me with a meſſage to your Lordſhips, of a generall and very high concernment, ſo generall, that the whole body of the Kingdome, both Peeres and people, are intereſted in it, of ſo high a conſequence, as that there is nothing that can concerne us nearer.

It's one of the *Grandia Regni*, ſo great as that I ſhall not need to preſent it to your Lordſhips in a multiplying Glaſſe, it will appeare too big in its owne dimenſions.

2. Its not that Ship-money hath been levied upon us, but its that right whereby Ship-money is claimed, which if it be true, is such as that it makes the paiment of Ship-money the gift and earnest penny of all we have.

Its not that our persons have been imprisoned for paiment of Ship-money, but that our persons and (as it is conceived) our lives too, are upon the same grounds of Law, delivered up to bare will and pleasure.

Its that our birth-right, our Ancestral-right, our condition of continuing Free-subjects, is lost, that of late there hath beene an endeavour to reduce us to the state of villainage, nay to a lower.

Its true, the Lord might taxe his villaine *De haute & de basse*, might take all his lands and goods, the villaine had no property against the Lord, the villaine he could not *Ire quo voluit*, he had no liberty of person, the Lord might imprison him at his pleasure, but the villaines life was his owne, and not his Lords, the Law secured him that. But my Lords, as the Law stands now declared, its disputable, whether it doth so much for us.

My Lords, the subject of this Message is, to present the sense of the Commons to your Lord-ships; That the Laws of the Realme instituted at first, and freely assented unto, and chosen by their Ancestors for the preservation of themselves and us their descendants, in our

our persons, lives and estates, have bin of late intrusted unto such hands, as have endeavoured to force upon them a contrary end to that, for which they were ordained, from defensive to turne them to offensive, and instead of protecting us, to make the Laws the instrument of taking from us all we have. Those carriages which have produced this sense of the Commons, I am commanded at this present to declare to your Lordships.

They are certaine extrajudiciall opinions delivered by the Judges at severall times, the one in November 1635. The other a yeare after in February 1636.

The Ship-writs that have issued to all the Counties of England, for these many years last past without intermission: The principall thing in these writs which I am to present to your Lordships, is not the charge and burthen which have been thereby imposed upon the subjects, though that be great, but the declarations in them of the Law, and of the right whereby this burthen may be imposed.

The last is, that judgement in Master *Hampdens* case in the Exchequer upon these Shipwrits.

My Lords, the two last, that is the shipwrit and the judgement, because they are very long, I am onely to open them without reading, and to deliver them to your Lordships; the other two I am to read them, and then to deliver them to your Lordships.

# Ship-money.

*The first opinion in November 1635. was read as followeth.*

I Am of opinion, that as where the benefit doth more particularly redound to the good of the Ports or maritime parts, as in case of Piracy or depredations upon the Seas, there the charge hath beene, and may be lawfully imposed upon them according to presidents of former times, so where the good and safety of the Kingdome in generall is concerned, and the whole Kingdome in danger, (of which his Majesty is the onely Judge) there the charge of the defence ought to be borne by all the Realme in generall: this I hold agreeable both to Law and reason.

My Lords, these opinions were delivered by the Judges severally and apart, they were procured by the solicitation of my Lord *Finch*; The Judges as he severally procured their hands, were by him enjoyned secrecy accordingly, these opinions walked in the darke for a yeare and upwards: afterwards the procurer of them, my Lord *Finch*, liked them so well, as that he presumed to deliver them to his Majesty. By his procurement, a letter was directed from his Majesty to the Iudges for the delivery of their opinions in these, and some

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other conditionalls. The former that hath bin read is more modeſt, its only that his Majeſty is the ſole Judge of the danger, and that the Iſland as well as the Maritime Townes are chargeable to the defence of the Kingdome.

Its not declared in theſe, that this charge may be impoſed by his Majeſty alone, for the expreſſion is onely, that the charge may lawfully be impoſed, ſay not by whom.

*In the other opinions they proceed* à malo ad pejus, and ſpeakes plaine *Engliſh, which follow* in hæc verba.

*Charles Rex.* *The Caſe*

VVHen the good, and the Caſe and ſafety of the Kingdome in generall is concerned, and the whole Kingdome in danger, whether may not the King by writ under the Great Seal of England, Command all the ſubjects in this Kingdome at their charge, to provide and furniſh ſuch number of Ships with men, victualls, and munition, and for ſuch time as he ſhall thinke fit for the defence and ſafeguard of the Kingdome, from ſuch danger and perill, and by Law compell the doing thereof in caſe of refuſall or refractorineſſe, and whether in ſuch caſe, is not the King the ſole Judge, both of the danger, and when, and how, the ſame is to be prevented and avoided?

*C. R.*

*Iudges*

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*C. R.*

*Iudges*

*Iudges Anſwer:*

MAY it pleaſe your moſt excellent Majeſty, we have according to your Majeſties Command, ſeverally, and every man by himſelfe, and all of us together taken into ſerious conſideration, the Caſe and queſtions ſigned by your Majeſty, and encloſed in your Royall Letter, and we are of opinion, that when the good and ſafety of the Kingdome in generall is concerned, and the whole Kingdome is in danger, your Majeſty may by writ under the great Seal of England, command all the ſubjects of this your Kingdome at their charge to provide and furniſh ſuch number of Ships, with men, victuall and munition, and for ſuch time as your Majeſty ſhall think fit, for the defence and ſafeguard of the Kingdome, from ſuch danger and perill: And that by Law your Majeſty may compell the doing thereof, in caſe of refuſall or refractorineſſe; And we are alſo of opinion, that in ſuch caſe your Majeſty is the ſole Judge, both of the danger, and when, and how the ſame is to be prevented and avoided.

Theſe opinions were ſubſcribed by all the Judges, in Serjeants Inne hall, they were afterwards publiſhed in the Starre-Chamber, that the ſubjects might take notice of them, and

that

hat they might never be forgotten, they are enrolled in all the Courts of *Weſtminſter* Hall, in *perpetuam Rei memoriam*: Your Lordſhips will be pleaſed to give me leave to repeat them, in their plaine and legall ſenſe, which I conceive to be thus.

That his Majeſtie, as often as himſelfe pleaſeth, may declare that the Kingdome is in danger, That ſo often, for prevention of ſuch danger, His Majeſty by his writ, under the great Seale of *England*, may alter the property of the Subjects goods, without their conſent in Parliament, and that in ſuch proportions, as his Majeſty ſhall thinke fit, and beſides the altering of the property of their goods, for the prevention of ſuch danger, may deprive them of the liberty of their perſons, and of their lives, and that in ſuch manner as himſelfe ſhall pleaſe.

1. The firſt of theſe (*viz.*) that his Majeſtie may declare the danger, as often as he pleaſeth, is made good in theſe words, that the King is ſole Judge of the danger, and when the ſame is to be prevented and avoided.

2. The ſecond, that ſo often he may alter the property of the ſubjects goods, without conſent in Parliament, in theſe words; That his Majeſty may, by writ under the Seale of *England*, command and compell all the ſubjects of the Realme, at their charge, to provide and furniſh ſhips.

3. That this may bee in what proportion his Majeſtie ſhall pleaſe in theſe words, that his Majeſtie may command them to provide and furniſh ſuch number of Ships, with men, victualls, and munition, and for ſuch time as his Majeſtie ſhall thinke fit.

4. The laſt (viz.) that which concernes our perſons in theſe two clauſes.

1. That his Majeſtie in caſe of refractorineſſe may compell the doing of it, this compulſion in caſe of refractorineſſe, includes the perſon as well as the eſtate: Nay, it ſounds more in the perſonality then otherwiſe. For the other, *viz.* whether this perſonall compulſion may extend ſo farre as to life, I humbly leave it to your Lordſhippes conſiderations, upon the other Clauſe; That is, that his Majeſtie is the ſole Judge of ſuch danger, and when, and how the ſame is to be prevented, whether the words, how it is to be prevented, in this caſe of perſonall compulſion, doth not leave the manner of it wholly in his Majeſties breaſt.

My Lords, if theſe opinions extend onely to Shippe-money, it is enough his Majeſtie takes what hee will, and when hee will, if all be taken to day, and afterwards by diſſent or my owne labour I get a new ſtocke or lively-hood, that is no more mine then the former, ſo that there is no property left unto the ſubject, though the opinions goe no further. But my Lords, Shippe-money is not the whole extent of them,

Ship-money, by theſe opinions is not due by any peculiarity in Shippe-money: but Shippe-money is therefore due, becauſe his Majeſtie is the ſole Judge of the danger of the Kingdome, and when, and how the ſame is to bee prevented, becauſe his Majeſty for the defence of the Kingdome, may at his will and pleaſure charge the people, this is the ground; and upon the ſame reaſon the compulſion may bee as well for the making and maintaining of Caſtles, Forts and Bulwarkes, making of Bridges, for tranſporting his Armies, for proviſion of wages, and victualls, for Souldiers, for Horſes and Carriages, it may bee multiplyed in *infinitum.*

It may bee done when the good and ſafety of the Kingdome is concerned, this extends to all things and at all times, *Qui jacit in terra, non habet unde cadat.*

If theſe opinions bee Law, I humbly leave it to your Lordſhips conſiderations, whether the Government bee not *Imperium legibus ſolutum*; The next thing I ſhall offer to your Lordſhips is the Shippe-writs, a tranſcript of one of them directed to the Sheriffe of Dorſetſhire, I ſhall deliver, all the reſt being of the ſame forme: becauſe that writ is long, I ſhall open it briefly, its to this effect.

There is a declaration in it that *Salus Regni periclitabatur*, that the ſafety of the Kingdome was in danger.

Therefore the Inhabitants of the ſeverall Counties are commanded for the defence of the Kingdome, for the cuſtody of the Seas, for the ſafeguard of the Merchants from Pyracie, inward and outward, that they ſhould provide a Ship of Warre, furniſhed with Gunnes, gunpowder, double Tackle, and all other neceſſaries, and this Shippe thus furniſhed at a day ſet, to bee brought to *Portſmouth*, to bee provided for ſixe and twenty weekes of Marriners wages, victualls, and other neceſſaries, and for the doing of this, authority is given to the Sheriffes of the ſeverall Counties, to aſſeſſe every of the Inhabitants *Secundum ſtatum & facultates ſuas*, according to their eſtates and meanes, and further power given him by diſtraining and ſettling of the Diſtreſſe to levie theſe moneys, *Si contrarios invenerit*, then to impriſon their perſons: and further declares, that all this may bee done, *Secundum Legem & conſuetudinem Regni*. The ſenſe I conceive is briefly thus: That by the Lawes of the Kingdome, when his Majeſty ſhall declare that the Kingdome is in danger, hee may alter the property of the ſubjects goods, and impriſon their perſons, nay, that not onely his Majeſty, but the Sheriffes may impriſon their perſons; by the Law the Lord might impriſon his Villaine, but could not transferre that power to his Bayliffe, or to any other, it was perſonall. That the execution of this power over the perſons of the

ſubjects hath gone no further then their impriſonment, whether therein wee bee not wholly beholding to his Majeſties grace and goodneſſe, and nothing at all to the opinions of the Judges, I leave it to your Lordſhippes conſiderations.

The laſt thing is, the Judgement in the Exchequer, in the thirteenth yeare of his now Majeſties Reigne, againſt Maſter *Hampden*, the Record is very long, I ſhall briefly open it to your Lordſhippes, *Quarto Auguſt.* 11. *Caroli*, there iſſued Shippe-Writs to the ſeverall Counties, amongſt the reſt to the Countie of Buckes, the Sheriffes aſſeſſed the Inhabitants; ſome of them made default, and did not pay upon a *Certiorari* out of the Chancery, directed to the Sheriffe, hee certifies the perſon that made default, together with the Summons aſſeſſed upon them. From the Chancery by *Mittimus*, Theſe Certificates were ſent into the Exchequer, to the intent Proces might iſſue againſt the defaulters. A *Scire facias* iſſued to the Sheriffe of Buckes, who thereupon amongſt other Returnes, that Maſter *Hampden* had beene aſſeſſed twentie ſhillings, for ſome lands in *Stoke-mandevile* in that County, which hee had not paid, Maſter *Hampden* appeared, and upon his appearance demands OYER of the Ship-Writs, and the other proceedings, after his hearing thereof and underſtanding the contents, hee demurres in Law, that is, demands the judgement and opinion of the

Judges, whether this writ was ſufficient in Law, and to force him to pay the ſaid twenty ſhillings.

This being a great and generall caſe, the Barons of the Exchequer deſired the aſſiſtance of the reſt of the Judges, who did joyne accordingly. The caſe came to bee argued, there were foure Arguments, two on Maſter *Hampdens* ſide, and two on the other ſide, the firſt was in Michaelmas Terme, after Alholantide, and all the foure Arguments were ſpeeded before Chriſtmas day, two of them in the Terme, and no longer time would bee procured for the reſt, but the ſhort vacation betweene Michaelmas Terme and Chriſtmas, it was a Caſe of ſo little concernment, that whereas in Weſtminſter Hall, Terme after Terme is uſually given to Argue any demurrer, this muſt bee argued betwixt Alhallontide and Chriſtmas, throughout after the Arguments, the Councell on both ſides were commanded to bring before the Judges the Records and Authorities cited, they were brought, and for the eaſe of the Judges, many of them on Maſter *Hampdens* part were abbreviated on the backſides, thoſe abbreviations were commanded to bee expounded; afterwards the Caſe came to Argument at the Bench, there the caſe was judged, and by the greater part of the Judges judgement was given againſt Maſter *Hampden*; when the Judges had delivered their Opinions, it was the Barons part to give judgement, the judge-

judgement was, *Quod ſeparabilia brevia predict. & return. eorundem ac Schedulum predict. eiſdem annex. ac materia in eiſdem content. ſuffecerit in lege exiſtent. ad prefatum Ioannem Hampden de predict. viginti ſolidis ſuper ipſum in forma & ex cauſa predict. aſſeſſis onerand. Ideo conſideratum eſt per eoſdem Baron. quod predictus Ioannes Hampden de eiſdem viginti ſolidis oneratum exinde ſatisfaciat.*

My Lords, this Judgement is a full and plenary execution of the former opinions of the Judges, and of the Ship-writs, for ſo much as it concernes our propriety; It was given in Maſter *Hampdons* caſe onely; but bindes all the ſubjects for ſo binding; it is as that an Honourable perſon, now in my eye, in a caſe depending in the Kings Bench, was denyed any argument or debate, concerning the right of Shippe-money, for no other reaſon, but that it had beene by the former Judgement adjudged already in the Chequer.

My Lords, theſe extra-judiciall opinions of the Judges, theſe Shippe-writs, and this Judgement, are thoſe carriages which have introduced this ſenſe of the Commons, that the fundamentall Lawes of the Realme concerning our property and our perſons are ſhaken.

My Lords, The Commons have taken the extrajudiciall opinions publiſhed and inrolled, and the reſt ſeverally into conſideration,

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they had beene read openly in the houſe, and after long debate, and long rather in conſideration of the greatneſſe of the matter then of the difficulty of it, they came to vote, foure ſeverall votes paſſed upon them, the votes paſſed without ſo much as one negative voyce to any of them.

The votes were in ſubſtance, that they were againſt the Laws of the Realme, the right of the property, the liberties of the ſubject, contrary to the former reſolutions in Parliament, and to the petition of right.

The extrajudiciall opinions inrolled, they voted in the whole, and every part of them to be contrary to all theſe, for they did conceive that in theſe opinions, there was not any one Clauſe that was agreeable to the Law, but that throughout they were contrary to the Lawes.

My Lords, the things which the Commons took into their conſideration, before they proceeded to their votes, were their proceedings in the Parliamẽt held 3. *Car.* when the petition of right was framed.

The Commons went no higher, the reaſons inducing them thereto, was, becauſe in that Parliament all thoſe 3 had bin debated, property of goods, liberty of perſons, and ſecurity of our lives.

Two of them, that is, propriety of goods and liberties of perſons, by the occaſions of the Commiſſions for the loane, and the Inſtruction wherewith theſe Commiſſions were accompanied, that concerning our lives, by occaſion of the Commiſſions that had iſſued, for the executing of Martiall Law.

They

They conceive that if any thing concerning theſe had paſſed *both Houſes* and his *Majeſtie*, or the *judgement* of *both Houſes* without his *Majeſty*, it would be in vaine to looke further, that it would be *actum agere*; Nay my Lords, they had a farther conſideration, that if thoſe were already ſetled in that *Parliament*, It would not onely bee derogatory to the *Iuriſdiction* of *Parliament*, but dangerous to looke higher as that they would infer a defect in thoſe Proceedings, and caſt an aſperſion upon that *Parliament*; I am commanded now to preſent to your *Lordſhips conſiderations*, thoſe things which ſatisfie the *Commons*, which are theſe three.

1 The Commiſſions for the *loanes*, with the Inſtructions.

2 A Commiſſion called the Commiſſion of *Exciſe*.

3 An *Addition* of *Saving*, which was deſired by your *Lordſhips* to have been added to the Petition of right, at the time of the framing of it.

The caſe upon the Commiſſion for the *Loane*, ſtandeth thus:

13. *Octobris* 2. *Caroli*, divers Commiſſions were directed to ſundry Commiſſioners, to the number of ſixty or ſeventy Lords and Gentlemen, in the ſeverall Counties iſſued, whereby a compulſary ayde by way of *Loane* was required of the

Subject, the cauſes and grounds of this Demand are in the Commiſſions expreſſed to be theſe.

The King found the Crowne ingaged in warre, by advice of *both Houſes* in *Parliament*; That not onely the King and the Subject, but alſo his allyes beyond-Sea, were in danger.

The parts beyond-Sea where our Cloth is vented, and from whence we have moſt of our proviſion for Shipping, were endangered; His Majeſties Treaſures were exhauſted, and his Coffers empty. A *Parliament* had been ſummoned, but no ſupply.

Unavoidable neceſſity both at home and abroad, multiplied the enemies: great and mighty preparations, both at Sea and Land, threatned the Kingdome daily.

Not onely the *Kings* honour, but the ſafety and very ſubſiſtance of the *King* and *People*, and of the true *Religion* abroad, are in apparant danger of ſuffering irreparably, unleſſe not onely a ſpeedy, but alſo a preſent ſtop bee made; which cannot admit ſo long delay as the calling of a Parliament: the people aſſured on the Royall word of a King, that not one penny ſhould bee beſtowed, but on thoſe publicke ſervices onely, wherein every of them, and the whole body of the Kingdome, their wives, children and poſterity, have their perſonall and common Intereſts.

The

The Commiſſioners diligence commanded as they tendered the Kings honour, and ſafety of the *Realme*; Here *ſalus Regni periclitabatur*, the whole Kingdome was in danger, as in the *Iudges* opinions, and as in the Shipwrits and judgement in the Exchequer. Nay my Lords, further; the ſafety and very ſubſiſtance of the *King*, *people*, and true *Religion* were in danger of ſuffering irreparably, the dangerous inſtance, not a ſpeedy, but a preſent ſtop muſt be made, the ſupply could not ſtay for a Parliament; at this time his Majeſties Coffers were exhauſted, the King found his Crowne engaged in this warre, before the Acceſſe of it to himſelfe, and that by advice in Parliament; all this expreſſed, onely lending of monies for prevention required; but it was a compulſary thing, and became compulſary, by the inſtructions to bind over to the boord, and impriſonment for refuſall. Theſe Commiſſions were in the Parliament 3. *Car.* Firſt reſolved in the *Commons houſe* to bee againſt Law: afterwards by your Lordſhips, and conſented unto by his Majeſty, and are declared to be ſo in the Petition of right, and the impriſonment of the Subjects for refuſall, declared in the Petition of right to bee againſt Law.

*My Lords*,

The next is the Commiſſion called the Commiſſion of *Exciſe*, this was dated *ultimo*

*Febr.* it was dated after the Summons to that Parliament: This Commiſſion iſſued to 33. Lords, and others of his Majeſties Privie Councell; the Commiſſioners are thereby commanded to raiſe monies by Impoſitions, or otherwiſe; as in their judgements they ſhall finde to bee moſt convenient.

The cauſes wherefore theſe monies are to be raiſed, are expreſſed to be theſe.

The defence and ſafety of the King and people, which without extreameſt hazard of the King, Kingdome, and people; and of the Kings Friends and Allies beyond Seas', cannot admit no longer delay: inevitable neceſſity, wherein forme and circumſtance muſt rather bee diſpenſed withall, than the ſubſtance loſt.

The Commiſſioners not to faile therein, as they tendered his Majeſties Honour, and the ſafety of the Kingdome and people.

Here *Salus Regni periclitabatur*, the whole Kingdome declared to be in danger, in greater and nearer, then in the opinions of the Shipwrits or Judgements in the Chequer.

In the Parliament 3. *Caroli* this Commiſſion was adjudged by the *Commons* to bee againſt the Lawes of this Realme, and contrary to the Judgement given in the Petition of right, and after a conference with your Lordſhips, deſired his Majeſty that it might bee cancelled: the then Lord-Keeper ſhortly

ſhortly after brought it cancelled to your Lordſhips in the Houſe, and there ſaid it was cancelled in his Majeſties preſence: you ſent it cancelled to the *Commons* to be viewed, who afterwards ſent it back to your Lordſhips.

*My Lords*, The laſt is the addition of ſaving, deſired to be added to the Petition of right, which was in theſe words.

Wee humbly preſent this Petition unto your *Majeſty*, not onely with a care of preſerving our owne Liberties, but with due regard to leave entire the Soveraigne power, wherewith your *Majeſtie* is truſted; for the Protection, Safety, and happineſſe of Your people: Your *Lordſhips* deſire of this Addition to the Petition of right, was taken into conſideration by the *Commons*; and after debate, it was thought fit by them to bee rejected. A conference was had with your *Lordſhips*, and Maſter *Noy* appointed by the *Commons* to declare the reaſons of their reſolution; your *Lordſhips* not receiving ſatisfaction at that conference, whether this Addition ſhould bee rejected or not: it was again debated in the *Commons houſe*, they ventured upon the ſame bottome againe; It was thereupon reſolved to bee rejected, the reaſons of their rejections were theſe in ſumme:

Firſt, they confeſſe that if theſe words were taken as a bare propoſition, onely, without any further reference to the Petition of right,

right, that it was a true propoſition.

That is, that the Law hath truſted the King with Soveraigne power for the protection, ſafety and happineſſe of the people.

But if it ſhould bee added to the Petition of right, as was deſired; then was it not true, but would make the Petition of right *felo de ſe*, and wholly deſtructive to it ſelfe in all the parts of it; that it would proceed *à bene diviſis ad mala conjuncta*: for then the Petition of right, as they reſolved, would have this ſenſe.

Whereas in the Petition of right, it is ſaid, that no aid, tax, tallage, or other charge whatſoever, may bee impoſed upon the people, without their free conſent in Pariiament; it would have this conſtruction. Its true, it cannot bee done by the Kings ordinary power, but it may bee done by that Soveraigne power wherewith the Law hath entruſted his Majeſtie for the protection, ſafety, and happineſſe of the people.

So likewiſe for impriſonment, that they ought not to bee impriſoned without due proceſſe of Law. It is true ordinarily, that the King may impriſon by his Soveraigne power, wherewith the Law hath entruſted him for the protection, ſafety and happineſſe of the people.

So that, for that Martiall Law, that the Subjects lives ought not to bee taken away, unleſſe by due proceſſe of Law. It is true ordinarily,

dinarily, but the King may doe it by his Soveraigne power, wherewith the Law hath intrusted him for the protection, safety, and happinesse of the people: whereby they conceived that it would not onely make the Petition of right to bee wholly distructive of it selfe, but likewise this Petition of right would leave the subject in a farre worse condition then it found them; for it would necessarily inferre, that which is against the Law: *viz.* that the King by his Soveraigne power, when hee pleased to declare that it was for the good of the people, might doe all this.'

Your Lordships at a conference of both *Houses*, engaged on the part of the *Commons* by Serjant *Glanvile*, and Sir *Henry Martin*, received satisfaction from these reasons; and consented to the leaving out of this Addition; and accordingly the Petition of right passed, and is printed without it.

My Lords, these were the things I was commanded to present unto your Lordships: other things there were, as the sentence against Bishop *Manwaring*; but these weighed so much with the *Commons*, as that they conceived they needed no more.

My Lords, these presidents of that Parliament, and these opinions of the Judges, the Shipwrits, and the Judgements in the Exchequer, they are like the two Buckets of a Well, if one goe up, the other must go downe:

downe: *non bene conveniunt.*

*My Lords*, wee have not cited these presidents out of diffidence, that your *Lordships* had forgotten them; but because others have; or that wee distrust your Lordships Justice, if you had forgot them: for before these were, your *Lordships* concurred in opinion with your worthy Ancestours, that first gave them. Their Noble bloud runnes in your veynes. It's now to confirme your owne Judgements as well as theirs, in your *Lordships* breasts: There are the same Magazines and Fountaines of Honour and Justice, as was then: these Judgements and proceedings were the Actions of *both houses*, the danger by violation is equall.

The *Commons* see nothing in the Judges opinions or judgement, why they should recede from their former judgements, they hope the same from your *Lordships*.

Besides, *my Lords*, that the case is now much varied from what it was then, not only in the matter, but as it concernes the Honour and Jurisdiction of this great Judicatory, the *Parliament*.

The breach of *Priviledges* in the members is tenderly resented, because that without this freedome, they cannot advise and consult concerning the *Arduæ Regni*,

But when they have done all to have their Judgements, and their Acts of *Parliament* overthrowne by the *Iudges* afterwards, thi

make

makes Parliaments to be nothing, this ſets up the Iudges above the Parliament, this puts us out of hope of redreſſe; if they may overthrow the proceedings of that Parliament of 3. *Caroli*, they may by the ſame reaſon overthrow the Actions of this, and of all future Parliaments.

My Lords, this was not the practice of their Predeceſſours, though but in private cauſes; if difficulty of Law aroſe, they alwayes conſulted this Oracle, and thence received their anſwer how to give judgement. Iudgements in the Higheſt Courts of Weſtminſter Hall, I meane in the Kings Bench; where the proceedings are (*coram Rege*) are here reverſed by Writ of Error. In cauſes of great and generall concernment, they ever adjorned them hither as things too high for them.

*Qui conſulta patrum, qui leges juraque ſervat*, doth well, they have taken that in their hands they had not to doe withall; and how they have handled the matter, your Lordſhips have heard.

The Iudges, as is declared in the Parliament, they have here made themſelves the executioners of them; they have endeavoured the deſtruction of the Fundamentalls of our Lawes and Liberties. Holland in the Low-countries lyes under the Sea, the ſuperficies of the Land is lower then the ſuperficies of the Sea: Its capitall therefore for

*Role* of 11. Rich. 2. *are the Executors of the Statutes and of the Iudgements and Ordinances of Parliament, they leave here made.*

downe: *non bene conveniunt.*

*My Lords*, wee have not cited these presidents out of diffidence, that your *Lordships* had forgotten them; but becauſe others have; or that wee diſtruſt your Lordſhips Juſtice, if you had forgot them: for before theſe were, your *Lordſhips* concurred in opinion with your worthy Anceſtours, that firſt gave them. Their Noble bloud runnes in your veynes. It's now to confirme your owne Judgements as well as theirs, in your *Lordſhips* breaſts: There are the ſame Magazines and Fountaines of Honour and Juſtice, as was then: theſe Judgements and proceedings were the Actions of *both houſes*, the danger by violation is equall.

The *Commons* ſee nothing in the Judges opinions or judgement, why they ſhould recede from their former judgements, they hope the ſame from your *Lordſhips*.

Beſides, *my Lords*, that the caſe is now much varied from what it was then, not only in the matter, but as it concernes the Honour and Juriſdiction of this great Judicatory, the *Parliament*.

The breach of *Priviledges* in the members is tenderly reſented, becauſe that without this freedome, they cannot adviſe and conſult concerning the *Arduæ Regni*,

But when they have done all to have their Judgements, and their Acts of *Parliament* overthrowne by the *Iudges* afterwards, thi

make

makes Parliaments to be nothing, this sets up the Iudges above the Parliament, this puts us out of hope of redresse; if they may overthrow the proceedings of that Parliament of 3. *Caroli*, they may by the same reason overthrow the Actions of this, and of all future Parliaments.

My Lords, this was not the practice of their Predecessours, though but in private causes; if difficulty of Law arose, they alwayes consulted this Oracle, and thence received their answer how to give judgement. Iudgements in the Highest Courts of Westminster Hall, I meane in the Kings Bench; where the proceedings are (*coram Rege*) are here reversed by Writ of Error. In causes of great and generall concerament, they ever adjorned them hither as things too high for them.

*Qui consulta patrum, qui leges jura que servat*, doth well, they have taken that in their hands they had not to doe withall; and how they have handled the matter, your Lordships have heard.

The Iudges, as is declared in the Parliament, they have here made themselves the executioners of them; they have endeavoured the destruction of the Fundamentalls of our Lawes and Liberties. Holland in the Low-countries lyes under the Sea, the superficies of the Land is lower then the superficies of the Sea: Its capitall therefore for

*Rot.* of 11. Rich. 2. *are the Executors of the Statutes and of the Iudgements and Ordinances of Parliament, they leave here made.*

any man to cut the Bankes, becauſe they defend the Countrey.

Beſides our owne, even forraine Authors as *Comineus* obſerves, that the Statute *de Tallagio*, and other old Lawes, are the Sea walls, and Bankes, which keeps the Commons from the inundation of the Prerogative.

Theſe Pioners, they have not onely undermined theſe Bankes, but they have levelled them even with the ground.

If one that was knowne to be *hoſtis Patriæ*, had done this, though the damage be the ſame yet the guilt is leſſe.

But the *Conſervatores Riparum*, the Overſeers intruſted with the defence of theſe bankes, for them to deſtroy them, the breach of truſt aggravates, nay alters the nature of the offence.

Breach of truſt, though in a private perſon, and in the leaſt things, is odious amongſt all men; much more in a publicke perſon, and in things of great and publicke concernment, becauſe great truſt bindes the party truſted to greateſt care and fidelity.

Its Treaſon in the Conſtable of Dover Caſtle to deliver the Keyes, to the knowne enemies of the Kingdome; becauſe that Caſtle is the Key of the Kingdome: whereas if the houſe-keeper of a private perſon, deliver poſſeſſion to his Adverſary; its a crime ſcarce puniſhable by Law.

The Judges under his Majeſty, are the perſons

ſons truſted with the Lawes; and in them, with the lives, liberties, and eſtates of the whole Kingdome: This truſt of all we have, is primarily in his Majeſty; and from him delegated to his Judges.

His Majeſty, at his Coronation, is bound by his oath to execute Juſtice to his people, according to his Lawes; thereby to aſſure the people of the faithfull performance of this great truſt. His Majeſty againe, as he truſts the Judges with the performance of this part of the oath: ſo doeth he likewiſe exact another oath of them for their due execution of Juſtice to the people according to the Lawes; hereby the Judges ſtand intruſted with this part of his Majeſties oath.

If therefore the Judges ſhall doe wittingly againſt Law, they doe not onely breake their oathes, and therein the common faith and truſt of the whole Kingdome, but doe as much as in them lyes, ſmeere and blemiſh the ſacred Perſon of his Majeſty; with the odious and hatefull ſinne of perjury.

My Lords the haynouſneſſe of this offence is moſt legible in the ſevere puniſhments which former ages have inflicted upon thoſe Judges, who hath broken any part of their oathes wittingly, though in things not ſo dangerous to the Subject, as in this caſe in queſtion.

Sir *Thomas Wayland* chiefe Juſtice of the

Common Pleas, *Ed.* 1. was attainted of Felony for taking bribes, and his lands and goods forfeited; as appeares in the Pleas of Parliament, 18. *Ed.* 1. and he was banished the Kingdome as unworthy to live in that State, againſt which hee had ſo much offended.

Sir *William Thorpe* Chiefe Juſtice of the Kings Bench, in *E.* 3. time, having of five perſons received five ſeverall bribes, which in all amounted to 100. pounds; was for this alone adjudged to be hanged, and all his lands and goods forfeited, the reaſon of this Judgement is entred in the Roll of theſe words.

*Quia prædict. Willielmus Thorpe, qui ſacramentum Domini Regis erga Populum ſuum habuit, ad cuſtodiendum, fregit malitioſe, falſe, & rebelliter quantum in ipſo fuit*; becauſe that he, as much as in him lay, had broken the Kings oath made unto the people, which the King had intruſted him withall.

There is that notable Declaration in that Judgement; that is, that this Judgement was not to be drawne into example, againſt any other Officers who ſhould breake their oathes, but onely againſt thoſe *Qui prædictum ſacrum fecerunt, & fregerunt, & habent leges Angliæ ad cuſtodiendum*; that is, onely to the Judges oathes, who have the Lawes intruſted to them.

This judgement was given 24. *Ed.* 3. the next

next yeare in the Parliament 25. *Ed.* 3. it was debated in Parliament, whether this judgement was legall; *& nullo contradicente*, it was declared to be juſt, and according to the Law: And that the ſame judgement may be given in time to come upon the like occaſion. This caſe is in point, that its death for any Judge wittingly to breake his oath, or any part of it.

This oath of *Thorpe* is entered in the Roll, and is the ſame *verbatim* with the Judges oath, in 18. *Ed.* 3. and the ſame which the Judges now take.

Your Lordſhips will give me leave to obſerve the differences betweene that and the caſe in queſtion.

Firſt, that of *Thorpe* was onely a ſelling of the Law by retayle to thoſe five perſons, for he had onely five ſeverall bribes of thoſe five perſons; the paſſage of the Law to the reſt of the Subjects, for ought appeares, was free and open.

But theſe opinions are a conveyance of the Law by whole ſale, and that not to, but from the Subject.

In that of *Thorpe*, as to thoſe five perſons, it was not an abſolute denyall of Juſtice, it was not a damning up, but a ſtraitning onely of the Channell.

For whereas the Judge ought *Iudicium reddere*, that is, the Law being the Birth-

right

right and Inheritance of the Subject, the Judge when the partyes in ſuite demand judgement ſhould *reddere*, freely reſtore this right unto them; now he doth not *dare* but *vendere* with the hazard onely of perverting juſtice; for the party that buyes the judgement may have a good and honeſt cauſe.

But theſe opinions beſides that they have coſt the Subjects very deare, dearer than any; nay I thinke I may truly ſay, then all the unjuſt judgements that ever yet hath been given.

Witneſſe the many hundred thouſand pounds which under colour of them have beene levyed upon the Subject, amounting to ſeven hundred thouſand pounds and upwards in money payd unto the Treaſurer of the Navy; beſides what the Subjects have beene forced to pay to Sheriffes, Bayliffes, and others, which altogether as is conceived amounts not to much leſſe than a Million: beſides the infinite vexation of the Subject by ſuits in Law, binding them over to attendance at the Councell-boord taking of them from their neceſſary imployments in making of Aſceſſes, and Collections, and impriſonments of their perſons.

I ſay my Lords, beſides what is paſt to make our miſeries compleat, they have

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as much as in them lyes made them endleſſe; for by theſe opinions they have put upon themſelves and their ſucceſſors an impoſſibility of ever doing us right againe, and an incapacity upon us of demanding it ſo long as they continue.

My Lords, in that ſore Famine in the Land of Ægypt, when the Inhabitants were reduced to the next doore to death; for there they ſay, *Why ſhould wee dye for bread.* Firſt they gave their money, next their flockes and cattell; and laſt of all, their perſons and their Lands, for bread, and all became *Pharaohs*; but by this *Rex Regia*, there is a tranſ-action made, not onely of our perſons but of our bread likewiſe, wherewith our perſons ſhould be ſuſtained. That was for bread, this is of our bread. For my Lords, ſince theſe opinions (if wee have any thing at all) wee are not at all beholding to the Law for it, but are wholly caſt upon the mercy and goodneſſe of the King.

Againe, there the Ægyptians themſelves ſold themſelves and all they had to the King; if ours had beene ſo done, if it had been done by our owne free conſent in Parliament, wee had the leſſe cauſe to complaine; but it was done againſt our wils, and by thoſe who were truſted, and that upon oath; with the preſervation of thoſe things for us.

My Lords, the Lawes are our Forts and Bulwarks

Bulwarks of defence, if the Captaine of a Caſtle, onely through feare and cowardiſe, and not from any complience with the enemy, ſurrender it; this is Treaſon as was adjudged in the Parliament, 1. *Rich.* 2. in the two caſes of *Grymes* and *Weſton*, and in the caſe of the Lord *Gray* for ſurrendring of Barwicke Caſtle to the Scots in *Edw.* 3. time, though good defence have beene made by him, and that hee loſt his eldeſt Sonne in maintenance of the Siege; and yet the loſſe of a Caſtle loſeth not a kingdome onely, but the place and adjacent parts, without trouble to the whole.

But by theſe opinions there is a ſurrender made of all Legall defence of propriety, that which hath beene preached is now judged that there is no *meum & tuum* betweene the King and the people, beſides that which concernes our perſons.

My Lords, the Law, it is the Temple, the Sanctuary whither the Subject is to runne for ſhelter and refuge: hereby it is become *templum ſine numine* as was the Temple built by the Roman Emperour who after he had built it, put no goods into it.

Wee have the letter of the Law ſtill, but not the ſenſe.

Wee have the Fabricke of the Temple ſtill, but the Goddeſſe, the *Dii-Tutelares* are gone.

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But my Lords this is not all the caſe (that is) that the Law now ceaſeth to aid and defend us in our rights, for then poſſeſſion alone were a good title, if there were no law to take it away, *occupanti concederetur & melior eſſet poſſidentis conditio.* But this (though too bad) is not the worſt; for beſides that which is privative in theſe opinions, there is ſomewhat poſitive: For now the Law doth not onely not defend us, but the law it ſelfe is made the inſtrument of taking all away.

For whenſoever his Majeſty, or his Succeſſors ſhall be pleaſed to ſay that the good and ſafety of the Kingdom is concerned, and that the whole Kingdome is in danger: then when and how the ſame is to be prevented, makes our perſons and all we have liable to bare will and pleaſure.

By this means the Sanctuary is turned into a ſhambles, the Forts are not ſlighted, that ſo they might neither doe us good or hurt: but they are held againſt us by thoſe who ought to have held them for us, and the mouth of our own Cannon is turned upon our ſelves.

My Lords, in theſe expreſſions, there is no reflexion upon his Majeſty. It is onely that thoſe Judges would have forced upon the law an unnaturall and contrary motion, his Majeſties carriage in the buſines cleares his juſtice.

The firſt opinion of the Judges under their hands, was procured by my L. *Finches* ſollicitation only, & by him brought to his Majeſty

Theſe opinions procured the letters from his Majeſty for the opinions enrolled, wherin, as likewiſe in the caſe in the Chequer, the Judges were left free, as was acknowledged by two of the Judges in the Chequer Chamber, who argued againſt thoſe opinions, with this proteſtation: That if there were any miſcarriages in that buſineſſe, it muſt fall wholly upon themſelves, that the King was blameleſſe.

My Lords, we know his Majeſties Juſtice is the faireſt the richeſt Diamond in his Crowne, the duſt which theſe men would have blown and forc'd upon it, its falne ſhort, and with your Lordſhips helping hands, it will, we hope, be caſt upon their owne faces, a fitter place for it then the other.

My Lords, the oaths of the Judges as they bind them to the true adminiſtration of juſtice to the ſubjects according to the lawes, ſo as they be of the Kings Councel, by their oaths, they are bound lawfully to counſell him, that is, when their opinions are demanded, they are to deliver them according to the Law.

I ſhall therefore put your Lordſhips in mind of the memorable proceedings againſt theſe Judges who have broken this part of their oath in that notable Parliament, held the eleventh of *Richard* the ſecond.

In this Parliament, judgement of high treaſon was given againſt 18 ſeverall perſons, and and all (ſave one of them) of eminent ranke, three Privy Counſellours, the Archbiſhop of *Yorke*,

*Yorke*, the Duke of *Ireland*, and Earle of *Suffolke*, the Biſhop of *Exeter*, the Kings Confeſſor, five Knights, ſome whereof had been ſervants to *Edward* the third, & all ſave one, ſervants to the then King, and ſome of them of noble Deſcent, ſix Judges, *Lockton* the Kings Serjeant at Law, *Blake* of the Kings Councell at Law, and *Vske* the under Sheriff of *Middleſex*: of theſe eighteene eight were executed, (that is) Sir *Robert Treſilian* the Chief Juſtice, five Knights, *Blake* of the Kings Counſell at Law, and *Vske* the under Sheriffe, three, that is, the Archbiſhop of *Yorke*, Duke of Ireland, and Earle of *Suffolke* fled.

The reſt had their lives pardoned, but were baniſhed; their lands and goods forfeited, and little penſiõs allowed them during their lives: It was made felony for any one to procure their pardons, and they to be dealt withall as Traytors, if they returned from their baniſhment: and of thoſe eighteene perſons all ſave three were impeached by the Commons.

The Offences which procured theſe exemplary puniſhmẽts, although their proceedings be long, and comprehended all that was done in this Parliament, Ile briefly open them to your Lordſhips. During the minority of that King by ill Counſell of ſome neere his perſon: there were miſcarriages in government. In the tenth yeare of his reigne, and the twentieth of his age, a Parliament was holden, in that Parliament in aid of good government, and of due execution of the laws, a Commiſ-

sion was awarded to 12 severall Peers, and others of greatest wisedom & fidelity, the Cõmissioners had power in all things cõcerning the houshold, court of Justice, & the revenues. In a word, in all things concerning the good of the realm, with full power finally to determine & put in execution for the honour of the King, the better governance of the peace, and lawes of the realme, and reliefe of the people.

This Commission was to endure one yeare, at the years end the King would be of ful age.

My Lords, the endeavouring to overthrow this Commission, issued by authority of Parliament, for the welfare of the Realme, upon pretence that it trenched upon the Royall power, tended to the dishersion of the King, and derogation of the Crowne, together with the destruction of the Commissioners who procured it, and put the same in execution, upon pretence that they and some others had in Parliament forced the Royall assents.

My Lords, the conspiring to overthrow this Commission, & the procurers of it, is the case in briefe: for although there be divers other articles against many of them, yet this was the ground-work of all, and this singly and alone is declared in all the proceedings in that Parliament to bee treason. Of these 18 persons condemned, five of them were plotters (*viz.*) the Archbishop, Duke of Ireland, Earl of Suffolk, *Trisilian* the chiefe Justice, and Sir *Nicholas Bramber*, these insinuated into the King that his Cõmission was in diminution of his Kingly

Kingly power, that the procurers of it had extorted his royall assent, and that this was treason: wherupon *Blake*, one of the Kings Councell at law, was advised withall, who declared his opinion, that it was treason, he was commanded to prepare an inditement of treason against the Commissioners, and some of the procurers of it, who had been active therein.

The inditement was drawn by him, which is entred in the Roll, and is to this effect.

That they had traiterously conspired amongst themselves in the Parliament, to make this Commission by authority of Parliament against the Regality of the King to his Disherison & Derogation of the Crown, that they compelled the Kings consent, and that they confederated and bound themselves to maintaine one another in so doing.

It was intended that they should be tried upon this Inditement in Middlesex or in London, *Vske* the Under-Sheriffe of Middlesex was acquainted with the businesse, who was to prepare things for the effecting of this designe, some of the parties to be indited, not being Peeres, which he performing accordingly, was therefore executed.

The five plotters, that the King might the more confide in their counsels (for so are the words of the record) & that under the colour of law they might cover their malice frō the King and the Kingdome, before the triall was to be had, they advise the King to demand the

opinion of ſome of the Judges, that is of the two Chiefe Juſtices, and Chiefe Baron, the Judges of the Common Pleas, ſix in number, and of *Lockton* the kings Serjeant, *Blake* of the Kings Counſell at Law was commanded to draw up theſe queſtions for the Judges opinions who did it accordingly.

For the drawing up of theſe queſtions, and the Indictment, *Blake* was condemned and executed.

The queſtion being drawne into writing, the Judges were ſent for to Nottingham Caſtle, where, in the Kings preſence they were commanded upon their allegiance to deliver their opinions.

1 The firſt queſtion was whether the commiſſion was in derogation of the Crown, they anſwered that it was.

2 The ſecond queſtion was whether the perſwading and urging the Kings conſent in Parliament thereto was Treaſon, they anſwered, that it was, though there were ſome other queſtions asked, all concerning parliamentary proceedings, yet theſe were the maine, and thoſe for which they were condemned, as appeares by the replication of the Commons to the Judges anſwer, and by the words of the judgment (*viz.*) that they knew that this commiſſion was awarded in Parliament, that it was for the publike good, that they knew of the trayterous intents to deſtroy the Procurors of this Commiſſion, that they knew the Law, and

and that it was not treaſon, & had delivered their opinions thereby under colour of Law, to cover their treaſonable intent, and therfore judgment of treaſon was given againſt them, and againſt *Loction* the Kings Serjeant at law, who had ſubſcribed the opinions with the Judges.

Sir *Simon Burley*, one of the five Knights that were executed, was condemned only for conſpiring the death of the procurers of this Commiſſion, and although there be other articles againſt the reſt, yet this alone is adjudged treaſon in the ſeverall judgments againſt every one of the eighteen.

1. My Lords, it is obſervable in all theſe judgements, that they are adjudged traytors, as well againſt the perſon of the King, as againſt the Common-wealth.

2. Secondly, it is there declared upon great advice taken, that in treaſons which concerne the King and Kingdome, they are not bound to proceed according to the rules of the common law, and inferiour Courts, but according to the courſe of Parliaments, ſo as may be for the common good.

3. Thirdly, judgement was given in Parliament, and execution awarded, & afterwards a Bill of Confirmation paſſed, in reſpect of their Lands, to give them from a day paſt, and for declaration that this ſhould bee no preſident to inferiour Courts to adjudge the ſame caſes treaſon, ſave onely in Parliament.

Theſe

Theſe judgements were not hudled up in haſt, but they were given upon long and mature deliberation, theſe judgements were the whole worke of that Parliament, and the proceedings againſt the five plotters were begun the fourteenth of *Novem.* and the judgments were not given till the thirteenth of *Feb.* following, which was a quarter of a yeare: And is declared in the Roll, that they ſpent a long time, and took great pains to examine the Evidences, the better thereby to ſatisfie their owne Conſciences, and the World.

I inſiſt the more upon this, to take away all blemiſh from theſe proceedings.

It is true my Lords, theſe judgements were afterwards in the Parliament of 21. *R.* 2. revoked and made void.

But my Lords, that Parliament of 21, *Ric.* 2. of revocation, was held by force, as it is declared in the Parliament Rolls of 1. *Hen.* 4. *Nov.* 21. *&* 22. that it was held *viris armatis, & ſagittariis immenſis.*

The Knights of Parliament were not elected by the Commons, *pro meos exigit, ſed per regiam voluntatem*: and ſo the Lords, *ſummoniri fecit Rex Dominos ſibi adherentes.*

My Lords, by theſe proceedings, it doth appeare, that this Parliament of revocation was no free Parliamẽt, if at all it deſerve the name of a Parliament; but to put all out of doubt, the Parliament of 1. *Hen.* 4. *No.* 48. theſe judgments of revocation are declared to be ἐκνοία *intqua*

*iniqua, & omnijuri & rationi repugnantia*; erronious, wicked and contrary to all right and reason; and in the Parliament of 1. *Hen.* 4. in print these Attainders are confirmed: so that these judgements of Attainder have the authority of two acts of Parliament both of them of force at this day.

Your Lordships will give me leave to observe the differences and agreements, between the offences of those, & of the present Judges, and as well in the way and manner of procurement, as in the matter of them: for the manner of procurement, those Judges in *Ric.* 2. time were in the Kings presence, and as it is in the Parliament Roll of 1. *Hen.* 4. *Nov.* 18. they were *violenter attracti*, violently drawn to deliver their opinions, and that *metu mortis & cruciatus corporis*, for the feare of death and tortures of their bodies; and at their trialls severally, they say, that in part violence had bin offered to their persons; becaus they had differed in the delivery of their opinions. My Lords, this was such a miscarriage in the Judges, these circumstances considered, as might *cadere in virum fortem & constantem*, but my Lords, feare or cowardize, is no plea for delivering up of the Forts and Bulwarks of the Kingdome.

But in the present businesse, there is none of all this, it came from within, there is no outward force: In those of *Ric.* 2. it was *Actus unicus*, once done at *Nottingham* Castle; if the

Judges had been put to it the ſecond time, perhaps the reſt as well as ſome of them had repented, & would not have done it over again: for *Belknape*, the Chiefe Juſtice of the Common Pleas, the ſame day declared his ſorrow, and ſaid, that now there remained nothing but a Horſe, a Hurdle & a Halter; & *Fulthorp* another of them the next day declared his grief, for what he had done. But here after the opinion in *Nov.* 1635. a yeare after, *viz.* 1636. they proceed *à peſſimo ad pejus peſſimo*, for that was with additions, moſt of them declared their opinions in their Circuits, and a year after confirmed it againe by the Indictment in the Exchequer, here it was done yeare after yeare in cold bloud: one murtherous blow, whereupon death follows, is fellony, but to multiply wounds upon the dead body, and to come againe in cool bloud to doe it, ſhewes the height of malice. In theſe two things they agree: 1. That which the Judges did in *Richard* the ſeconds time, they did it againſt their own knowledge, they knew the Commiſſion was done by Act of Parliament; ſo here they knew the Petition of Right damn'd the Commiſſions of Loanes, a ſtronger Caſe then that, they ſubſcribed many of them, knew that the Commiſſion of Exciſe was damn'd in Parliament, they knew the other proceedings in Parliaments, and if they had forgotten them, they were afterwards put in minde of them, they needed not to have conſulted with Books

and

and Journals of Parliaments, ſaving only with their own memories.

2 They agree in this, that their opinions tended to the ſubverſion of the Laws and Statutes of the Kingdome, for in that of *Ric.* 2. the offence was the endevouring to overthrow Parliaments, and Parliamentary proceedings, the conſpiracy of the death of the procurers was only an aggravation. It was not Treaſon to conſpire the death of a Privy Counſellour, or to kill a Judge, unleſſe hee be upon the Bench, and in that caſe it is Treaſon, becauſe of the malice, not of the perſon, but to the Law; ſo that there the Treaſon lay in this, not that they conſpired barely againſt their perſons: but with reference to their proceedings in Parliament, and thereby to overthrow the Acts of Parliament, wherein theſe perſons had been principall Actors. But in this againe they diſagree, for in that caſe there was not only a conſpiracy, no death followed to the Procurers of the Commiſſion, nor was the Commiſſion overthrown, all that was done, not onely this, that a warrant was directed to the Lord *Major* of *London*, for apprehending their perſons to bring them to triall, which yet was not done. But here (after the opinions delivered) judgement was afterwards given by them in the Exchequer, and execution awarded thereupon; for ſo much as concerns our property.

And likewiſe in the Kings Bench, where the judgements after the judgements in the Exche-

quer refuſed to heare any more debate of the matter, and ſo for the liberty of our perſons by keeping divers of the ſubjects in priſon, terme after terme, for not paying Ship-money, and other things depending upon thoſe opinions, when they had been brought before them upon their *Habeas Corpus*.

4 In that of *Ric.* 2. it was for overthrowing but of one Act of Parliament, which was likewiſe introductive of a new Law, for the Commiſſion had no riſe from the Common Law, for in truth it was derogatory to the Crown: It had onely the ſtrength of the Parliament to ſupport it, which was ſufficient, it was for the common good.

But here the endeavour was at once not to blow up one Act of Parliament, but all; and theſe not introductive, but declaratory of the Cõmon Law, as was the petition of Right, the Statutes there mentioned, & the Reſolutions.

That of *Ric.* 2. was but the blowing up of the upper Deck, this of the Common Law, & the Statutes too, and the old foundations and the ſtructures built upon them all together.

In that of *Ric.* 2. it was onely to overthrow a Temporary Act of Parliament, that was to continue no longer then one year; but this to make an eternall devaſtation (for *toties quoties*) to the worlds end, as his Majeſty or his Succeſſors ſhall ſay, that the Kingdome is in danger, may theſe opinions be put in execution, and likewiſe they are enrolled in all the Courts

of

of *Weſtminſter* Hall in *perpetuam rei memoriã*.

The ſin againſt the holy Ghoſt is therefore unpardonable, becauſe it takes from the party repentance, the meanes of pardon; to put us therefore into a Caſe of deſperation, ſome of them have publikely and upon the Bench declared, that this perogative is ſo inherent in the Crown, as that it cannot be taken away by Act of Parliament.

As they have put an impoſſibility upon themſelves, ſo would they put an impoſſibility upon his Majeſty, your Lordſhips and the whole Parliament, for ever righting us again.

My Lords, *contra juxta ſe poſita magis eluceſcunt*, I have preſented your Lordſhips with the obliquity of the ill Judges in *Ric.* 2. time, give me leave to preſent your Lordſhips with one example of a contrary nature. And that was in Queen *Elizabeths* time, in the 29. yeare of her Majeſties Reign: She erects a new office in the Common Pleas, for the making of *Superſedeas* on *Exigents* that iſſued there, ſhee grants it to *Richard Cavendiſh*, her ſervant, ſends to have him admitted, but the Judges delay the doing of it for this reaſon, becauſe the Prothonotaries and Phillizers claimed the making of thoſe Writs: The *Queen* ſends a ſharp letter, and commands them forthwith to admit him, yet the Judges forbeare: the *Queen* ſend a ſharper Letter, commanding them to ſhew the reaſons of their contempt, and diſobedience to the then Lord Keeper, and the

Earle

Earle of *Leiceſter*, no mean men in thoſe daies, the Judges deliver their Reaſons why they had refuſed, and it was becauſe others claimed the making of thoſe Writs.

The *Queen* ſends a fourth peremptory meſſage for their admitting him with this Reaſon, that if the others were put out, they were rich and able men, and that her Courts of Juſtice were open where they might demand their Rights.

This was not to take away the right, but to put them to their Action.

The Judges humbly returned this anſwer, that the *Queen* had taken her Oath for the due execution of Juſtice, according to the Law, that they did not doubt, but that when her Majeſty was inform'd, that it was againſt law, ſhe would doe what befitted her; for their parts they had taken an oath to God, to her and the Common-wealth, and if they ſhould doe it without proceſſe of Law, before them, and only upon her command, put the other out of poſſeſſion, though the right remained to them, it were a breach of their Oaths, and therefore if the feare of God were not ſufficient, they told her the puniſhment that was inflicted, upon their predeceſſors for breach of their oaths: (citing theſe of *Thorpe* of *Ric.* 2. time) that they might be ſufficient warning tō them: the *Queen* hearing of theſe Reaſons was ſatisfied, and the Judges heard no more of the buſineſſe.

*This remains under the hands of* Anderſon *the Lord Chiefe Juſtice in a book of his Reports.*

Theſe Judges have had examples of both kinds

kinds before them, they might have choſen the good and refuſed the bad.

My Lords:

Beſides theſe judgements and opinions the Commons will in due time bring up theſe Judges with their other judgements, *Corpora cum cauſis*, for your Lordſhips will eaſily conceive that they who have done this have done more; the principall of them, I meane my Lord Keeper, ſtands accuſed before your Lordſhips of high Treaſon: he is not here, Juſtice goes *pede lento, ſed certo*, it will overtake him at the laſt.

The next ſtep that is making after him, are the Articles of his impeachment, which with your Lordſhips patience are now ready to be opened and delivered to your Lordſhips.

*FINIS.*